

TITLE 312 NATURAL RESOURCES COMMISSION

Proposed Rule LSA Document #09- DIGEST

Adds 312 IAC 11.5 to govern the emergency regulation of surface water rights on freshwater lakes that contain at least ten (10) acres. Repeals 312 IAC 11-6 which currently governs this subject. Provides that the director of the division of water may file with the natural resources commission a complaint for a notice of violation under IC 14-10-2-6. Makes technical corrections. Effective January 1, 2011.

SECTION 1. 312 IAC 11.5 IS ADDED TO READ AS FOLLOWS:

312 IAC 11.5 SURFACE WATER EMERGENCIES ON LAKES

Rule 1. Administration and enforcement

312 IAC 11.5-1-1 Administration

Authority: IC 14-10-2-4

Affected: IC 14-25-5-15

Sec. 1. The division shall administer and coordinate the professional and technical functions required of the department under IC 14-25-5 and this rule.
(Natural Resources Commission, 312 IAC 11.5-1-1)

312 IAC 11.5-1-2 Enforcement

Authority: IC 14-10-2-4

Affected: IC 14-10-2-6; IC 14-25-5-15

Sec. 2. To enforce IC 14-25-5 or this article on behalf of the commission:
(1) The director may initiate an action under IC 14-25-5-15(b) to enjoin a violation.
(2) The division director may, under IC 4-21.5-3-8, file with the commission a complaint for a notice of violation under IC 14-10-2-6. *(Natural Resources Commission, 312 IAC 11.5-1-2)*

Rule 2. Definitions

312 IAC 11.5-2-1 Applicability of definitions

Authority: IC 14-10-2-4

Affected: IC 14-8; IC 14-25-5

Sec. 1. The definitions in sections 2 through 9 of this rule apply throughout this article and are in addition to those set forth in IC 14-8 and 312 IAC 1. *(Natural Resources Commission; 312 IAC 11.5-2-1)*

312 IAC 11.5-2-2 “Cumulative effect” defined

Authority: IC 14-10-2-4

Affected: IC 14-25-5

Sec. 2. “Cumulative effect” means the impact of multiple significant water withdrawal facilities. *(Natural Resources Commission; 312 IAC 11.5-2-2)*

312 IAC 11.5-2-3 “Division” defined

Authority: IC 14-10-2-4

Affected: IC 14-8; IC 14-25-5

Sec. 3. “Division” means the division of water of the department. *(Natural Resources Commission; 312 IAC 11.5-2-3)*

312 IAC 11.5-2-4 “Extraordinary or unique natural resource” defined

Authority: IC 14-10-2-4

Affected: IC 14-25-5; IC 14-29-6; IC 14-31-1

Sec. 4. “Extraordinary or unique natural resource” means a natural resource that is exceptional to a very marked extent within Indiana and includes the following:

- (1) A plant or animal that is a rare, threatened, or endangered species.**
- (2) A waterway located within one-half (½) mile of a freshwater lake and determined by the department to qualify as a natural river or a scenic river under IC 14-29-6 and 312 IAC 7-2.**
- (3) A nature preserve dedicated under IC 14-31-1.** *(Natural Resources Commission; 312 IAC 11.5-2-4)*

312 IAC 11.5-2-5 “Financial responsibility bond” defined

Authority: IC 14-10-2-4

Affected: IC 14-25-5

Sec. 5. “Financial responsibility bond” means any of the following:

- (1) Surety bond.**
- (2) Certificate of deposit.**
- (3) Cashier’s check**
- (4) Letter of credit.**

(Natural Resources Commission; 312 IAC 11.5-2-5)

312 IAC 11.5-2-6 “Freshwater lake” defined

Authority: IC 14-10-2-4

Affected: IC 14-25-5

Sec. 5. (a) “Freshwater lake” means a body of standing surface water that contains at least ten (10) acres at the body of water’s normal level and:

(1) is of natural origin; or
(2) was originally constructed to permanently retain water and was in existence at least five (5) years before the commencement of water withdrawals by a significant water withdrawal facility.

(b) The term does not include Lake Michigan. (*Natural Resources Commission; 312 IAC 11.5-2-6*)

312 IAC 11.5-2-7 "Lake owner" defined

Authority: IC 14-10-2-4

Affected: IC 14-25-5

Sec. 7. "Lake owner" means a person in possession of property that includes a physical part of, or a legal interest in, a freshwater lake. (*Natural Resources Commission; 312 IAC 11.5-2-7*)

312 IAC 11.5-2-8 "Significant environmental harm" defined

Authority: IC 14-10-2-4

Affected: IC 14-25-5

Sec. 8. "Significant environmental harm" means damage to natural or cultural resources, the individual or cumulative effect of which is found by the director to be obvious and measurable (based upon the opinion of a professional qualified to assess the damage) and that:

(1) creates a condition where recovery of affected resources is not likely to occur within an acceptable period; and

(2) cannot be adequately mitigated through the implementation of a mitigation plan approved by the director. (*Natural Resources Commission; 312 IAC 11.5-2-8*)

312 IAC 11.5-2-9 "Significant water withdrawal facility" defined

Authority: IC 14-10-2-4

Affected: IC 14-25-5

Sec. 9. "Significant water withdrawal facility" means a water pumping installation or other equipment of a person that, in the aggregate from all sources and by all methods, has the capability of withdrawing at least one hundred thousand (100,000) gallons of water in one (1) day. (*Natural Resources Commission; 312 IAC 11.5-2-9*)

SECTION 2. 312 IAC 11-6 IS REPEALED.